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December 2, 2008

Via Facsimile and Hand Delivery

Chairman Giangreco and Planning Board Members
c/o Code Enforcement Office
City of Auburn
Memorial City Hall
24 South Street
Auburn, New York 13021

Re: State Environmental Quality Review Act ("SEQRA")

Dear Chairman Giangreco and Members of the Planning Board:

We are in receipt of the Draft Environmental Assessment Form ("EAF") prepared by the City of Auburn Office of Planning and Economic Development. As you are aware, the Office of Planning and Economic Development has recommended to you that a Positive Declaration for the Project. As you may be aware, a Positive Declaration means that you find that the Project "may have a *significant* adverse impact on the environment and that an environmental impact statement [EIS] will be required." In particular, Staff has recommended that you find that the following items constitute significant adverse impacts on the environment that must be studied as part of the EIS.

1. Construction of the cul de sac
2. Aesthetics of the homes
3. Archeological
4. Traffic
5. Character of community

With all due respect to the Staff and the Planning Board, we disagree with the conclusion that the above-referenced items, as discussed more fully in the draft Parts 2 and 3 of the EAF, justify the issuance of a Positive Declaration for the Project. For clarity, we will respond to each herein for your consideration before you make your Determination of Significance pursuant to SEQRA.

First, with regard to alleged issues associated with the construction of the access road, the road is designed to be fully compliant with all city specifications. The road will be dedicated to

the City upon completion, and as a result, it will be constructed to the satisfaction of the City Engineer. It is not necessary to conduct further study and prepare an EIS for the design of a cul de sac, which, by law, will need to be constructed to the specifications of the City Engineer.

Second, it is the Staff's opinion that the Project somehow affects aesthetic resources of the neighborhood, as it is "obviously different from or in sharp contrast to the surrounding land use patterns, whether man-made or natural". The Project is a residential subdivision that is located in a residential district, adjacent to other residential neighborhoods. To conclude that the Project is in sharp contrast to the surroundings is unsupported. If the applicant proposed a Walmart store or other commercial use, then the response set forth in Part 2 of the EAF could be justified. The City of Auburn's Zoning Code *specifically* allows semi-detached single family dwellings, which are in full compliance with the Zoning Code. We must respectfully disagree with the subjective conclusion set forth by Staff in Part 3 of the draft EAF. We ask the Planning Board to discuss this issue openly before making a determination that the Project will have "a significant adverse impact on the environment" as a result of the aesthetics. While it may be arguable that there will be a small adverse impact to aesthetics, a point to which I personally disagree, the subjective conclusion that the Project constitutes a significant adverse impact from an aesthetic perspective thereby requiring further study and evaluation as part of an EIS is absurd. As we are all aware, the design is in full compliance with the Zoning Code and is in accordance with the funding requirements from the State of New York.

Third, the State Historic Preservation Office has determined that the Project will have "no affect" upon cultural resources in or eligible for inclusion in the National Register of Historic Places. Had SHPO been concerned with archeological resources, it would have recommended further study. SHPO is the State agency that regulates *archeological resources*. In fact, attached hereto is a clarification email from SHPO confirming that "The No Effect means that all the Units at the SHPO, including Archaeology, have signed off on the project and have no further concerns." It is inappropriate for the City of Auburn Planning Board to identify potential impacts associated with archeological resources as a "potential large" impact when the State regulating authority has determined that there is no affect.

Fourth, with regard to transportation, we disagree with the conclusion that the traffic associated with the Project constituted a potentially large significant adverse impact requiring further study and evaluation as part of an EIS. Of course, the additional traffic will have a small to moderate impact on the environment. In fact, the traffic analysis completed by the Applicant quantifies this impact - a wait of an additional few seconds. Notwithstanding, this minor impact does not rise to the level of requiring further investigation as part of an EIS.

Fifth, we vehemently disagree with Staff's conclusion that the proposed action is in "conflict with officially adopted plans or goals". The Project is in full compliance with the Zoning Code enacted by the City Council. It is wholly inappropriate to use the SEQRA process to make such a statement that is not supported by the Zoning Code. This unsupported conclusion should not be used to require an EIS be prepared, when the Project is in full compliance with the Zoning Code. Further, Staff continues to ask for "master plan" or all property owned by the

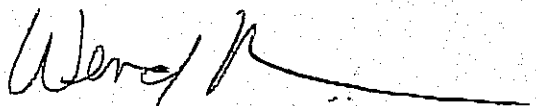
Applicant. The Project involves a residential subdivision, which is pending before this Planning Board. I do not understand why the Applicant is bombarded with a question as to a "master plan" when the Applicant has clarified for the Planning Board that the Project involves only the subdivision Project with no plans for additional structures or housing units.

With all due respect to the Planning Board, we continue our request that a Negative Declaration be properly issued for the Project to allow the Planning Board to then make a decision, whether it be approval or denial, on the Project's merits. To utilize SEQRA in the manner currently proposed is an inappropriate use of the real purpose of the State Environmental Quality Review Act. There are no potentially large significant adverse environmental impacts associated with the Project that require further investigation in an EIS. Of course, any Project involves a small to moderate impact by their very nature. Moreover, it is clear this Project is controversial to the neighbors; this controversy, however, does not justify the issuance of a Positive Declaration. It is time for the Planning Board to conclude its SEQRA review and make a decision on the Project.

Thank you for your consideration of our position and request that the Planning Board conclude its SEQRA review tonight.

Very truly yours,

HANCOCK & ESTABROOK, LLP



Wendy A. Marsh

Enclosure

cc: Stephen Selvek, City of Auburn Planner (w/ enclosure)
Jennifer Haines, Director Office of Planning & Economic Development (w/ enclosure)
Andrew Fusco, Esq. (w/ enclosure)
Mayor Quill (w/ enclosure)